

**REMARKS**

As indicated in §1 on page 2 of the final Office Action mailed December 16, 2002, that Office Action supplemented an Office Action mailed December 3, 2002. As indicated in §10 on page 8 of the Final Office Action mailed December 16, 2002, the date for response is three months from December 16, 2002, or March 16, 2003. This amendment and accompanying RCE are being filed by express mail on April 16, 2003, along with a request for a one-month extension of time.

Claims 13-24 are presented. Claims 13 and 15 are independent, and the rest are dependent. All of the claims have been amended by amendment of the independent claims. The Advisory Action mailed April 2, 2003, refused entry of the Response to Final Office Action mailed March 17, 2003, and filed March 31, 2003. Accordingly, the claim amendments made by the current submission are relative to the claims as presented by the amendment mailed August 29, 2002, and filed September 17, 2002. It is respectfully submitted that the claims as now amended are in condition for allowance, and favorable reconsideration of the application is respectfully requested.

Claim 13 is rejected under 35 U.S.C. §103(a) as being unpatentable over a US patent to Yamada No. 4,427,404 in view of a US patent to Willis No. 3,673,757. Claim 14 is rejected under 35 U.S.C. §103(a) as being unpatentable over the Yamada patent in view of the Willis patent and further in view of a US patent to O'Connor No. 6,035,608 and a US patent to Ito et al. No. 4,469,243. Claims 15-18 are rejected under 35 U.S.C. §103(a) as being

unpatentable over the Yamada patent in view of a US patent to Ellis No. 5,516,256 and the Willis patent. Claims 19-22 and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over the Yamada patent in view of the Ellis and Willis patents and further in view of the O'Connor patent. Claim 23 is rejected under 35 U.S.C. §103(a) as being unpatentable over the Yamada patent in view of the Ellis and Willis patents and further in view of a US patent to Reider No. 6,071,223 and the O'Connor patent. In responding to applicant's arguments in the amendment filed September 17, 2002, the Examiner states: ...

“...it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed structural limitations.”[Emphasis added.]

The same statement is made in an attachment to the Advisory Action.

The rejections are respectfully traversed. The claims have all been amended by amendment of the independent claims to properly differentiate the invention from the prior art.

Claim 13 and the claims dependent thereon are directed to a combination. The combination comprises seeds for germination, a packed tape comprising at least one folded tape and a package. The combination is characterized in that the tape carries the seeds. The tape is zigzag folded into at least one oblong stack in such a manner that some of the bendings of the tape are flush with ends of the stack whereas the remaining bendings are positioned at various distances therefrom. This facilitates pulling the tape out of the package.

Claim 15 and the claims dependent thereon are directed to a method of producing a folded tape and a package containing seeds for germination. The method is characterized in that the tape carries the seeds and is advanced continuously from a tape supply to a packing

location where the tape is zigzagged folded by virtue of its weight and by means of side lowering means into at least one oblong stack on the bottom of the package formed as a bag or box. The folding is done in such a manner that some of the bendings of the tape are flush with the ends of the stack. The remaining bendings are positioned at varying distances therefrom. This facilitates pulling the tape out of the package. After the filling of the package, the layers of the stack are compressed and the package is closed.

Thus claim 13 and the claims dependent thereon are directed to a combination, and claim 15 and the claims dependent thereon are directed to a method. The Examiner cites the case of ex parte Masham, 2 USPQ2d 1647(1987), in the Final Office Action and in the Advisory Action. Claims 2-9 were canceled from the application that was the subject of that appeal, leaving only claim 1, which was an apparatus claim. The amended claims of the present application are directed respectively to a combination of seeds, etc., and to a method comprising a series of steps. The Masham case is therefore not in point.

As indicated below, the elements recited in the combination claims and the steps recited in the method claims cannot fairly be inferred from the teachings of the documents relied upon and thus distinguish the invention from the prior art.

The Yamada patent discloses stacking and accumulating tape in folded layers within an accumulation box. The top of the tape stack is pressed down to form a compact folded tape to increase the amount of tape stacked in the accumulation box to several times that in the prior art (patent 1:48-62). The invention disclosed in the patent is utilized after dyeing, water-rinsing, and drying the tape (patent 1:18-23). This clearly has nothing to do with the

purposes of the present invention.

One skilled in handling seeds for germination would not look to this document, which highly compresses a tape, for a suggestion of how to package a tape that carries such seeds. Germinating seeds are vessels for DNA and other fragile components. One would not simply assume that a compression process that would not damage a plain tape would be useful in forming a package including a tape that carries seeds for germination. One could, for example, no doubt place a plain tape on an anvil and strike it with a hammer without doing any damage. However, if a tape carrying seeds for germination were treated in that manner, one would expect the seeds contained therein to be split open and destroyed. Moreover, dying is completely foreign to handling such seeds.

The Willis patent also contains no instruction of any use for the purposes of the present invention. That patent discloses a method of making pillows. Again, a person concerned with packaging a tape that carries seeds for germination would not look to the Willis patent for its instruction in pillow-making.

These considerations help to explain why, despite the long availability of these documents, the present invention was not made long before now.

In particular, we note that the Yamada patent issued January 24, 1984, with an effective reference date of December 15, 1981; and that the Willis patent issued July 4, 1972, with an effective reference date of January 4, 1971. At the rate of advance of modern technology, these references can be considered quite old. Both have been available in the

intervening decades to inventors working on improved technologies for handling seeds for germination. If as the Office Action contends those references did indeed make the invention as defined in applicant's claims obvious to a person having ordinary skill in the art, then surely the invention would have been made long before now.

The reason for the long delay in making the present invention following the effective dates of those references is certainly not a lack of need for the present invention. The present invention makes it easy to pull out the tape through a dispensing opening in the germinating box on a bedding machine and enables a considerable improvement in the efficiency of bedding out. There has been a huge incentive to improve the method of bedding out during the entire span of decades during which the Yamada and Ellis patents have been available to those working in agronomics.

The other documents relied upon do not make up for the deficiencies of the Yamada and Ellis patents as a suggestion of the invention as defined in the claims as resubmitted. The O'Connor patent is cited as disclosing several stacks arranged in parallel, a box package, and separating sheets. The Ito et al. patent is cited for its disclosure of several stacks arranged in parallel with separating sheets. The Ellis patent is cited for its disclosure of side means for stacking a material in a zigzag formation. The Reider patent is cited for its disclosure of an electronic control unit.


Thus the Yamada and Willis patents fail to support the rejection of claim 13 and the claims dependent thereon, those patents plus Ellis fail to support the rejection of claim 15 and the claims dependent thereon, and those patents plus the additional references likewise fail to

support the rejections.

For the reasons stated, it is respectfully requested that the Examiner enter this Amendment and issue a Notice of Allowance.

If a telephone interview would expedite the prosecution of the application, the Examiner is respectfully requested to call undersigned counsel.

Respectfully submitted,  
COOPER & DUNHAM LLP

A handwritten signature in cursive script, appearing to read "Donald S. Dowden", is written over a horizontal line.

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**VERSIONS WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS**

Please amend claims 13 and 15 by rewriting them as follows:

13. (Thrice Amended) In combination, seeds for germination, a packed [germinating] tape comprising at least one folded tape and a package, characterized in that the tape carries the seeds and is zigzag folded into at least one oblong stack in such a manner that some of the bendings of the tape are flush with the ends of the stack whereas the remaining bendings are positioned at varying distances therefrom, thereby facilitating pulling the tape out of the package.

15. (Twice Amended) A method of producing a packed, flexible, folded [germinating] tape and a package containing seeds for germination, characterized in that the tape carries the seeds and is advanced continuously from a tape supply to a packing location where said tape is zigzag folded by virtue of its weight and by means of side lowering means into at least one oblong stack on the bottom of the package formed as a bag or a box in such a manner that some of the bendings of the tape are flush with the ends of the stack and that the remaining bendings are positioned at varying distances therefrom, thereby facilitating pulling the tape out of the package, and that after the filling of the package the layers of the stack are compressed and the package is closed.